

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3120 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SABBIRBHAI MUSABHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

MR SUNIL C PATEL for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/07/96

ORAL JUDGEMENT

The petitioner Sabbir Musabhai Patel in this petition under Article 226 of the Consitution of India has challenged the legality and validity of the order of his detention dated 3.3.1996 passed under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") by the Police Commissioner, Surat City, (hereinafter referred to as the 'detaining authority') who after considering the

material placed before him recorded a finding that the detenu is a dangerous person within the meaning of section 2(c) of the PASA Act and, with a view to preventing detenu from acting in any manner prejudicial to the maintenance of the public it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenged in the present petition.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on 3 criminal cases, namely CR No. 480/94, 231/94 and 381/95 registered against the detenu for the offence punishable under the IPC. Over and above these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses. The statements were recorded on 11, 12, and 13-1-1996,

Mr. SC Patel learned advocate appearing for the petitioner in the first submission has submitted that the petition is required to be allowed on the ground of delay in passing the order of detention. Since this contention is required to be accepted, it is not necessary to decide the other contentions. Now it is not in dispute that the last criminal case being CR No. 381/95 registered against the detenu in the Athwa Lines Police Station on 28.11.1995 and the detenu has been released on bail on the same day. It is after the petitioner was released on bail, the concerned authority has started recording the statements of the witnesses on 11, 12 and 13-1-1996 and, subsequently, the order dated 3.3.1996, which is impugned, is passed. Thus, there is a delay of more than two months in passing the order of detention from the date of the registration of the last offence. Needless to say that the respondents have not explained the delay in passing the order of the detention. The Supreme Court in the case of Pradeep Nilkanth Paturkar vs. Rananurthi & Ors., reported in AIR 1994 656 SC, has set aside the order of detention on the ground of delay. In view of the same, the present petition is also required to be allowed by holding that in view of the unexplained delay in passing the order of detention, the continued detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 3.3.1996 is quashed and set aside. The detenu - Sabbirbhai Musabhai Patel is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule is made absolute with no order as to costs.
